

Article 15 | Enforcement

Sec. 15.1 Violations; Violators

15.1.1 Applicability

Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, shall apply to enforcement provisions of this Ordinance and state statute or regulation governing sedimentation and erosion control. Sec. 15.6, Floodplain and Flood Damage Protection Enforcements and Penalties, shall apply to enforcement of provisions of this Ordinance and state statute or regulation governing floodplain and flood damage protection. Sec. 15.8, Riparian Buffer Protection Enforcement, shall apply to enforcement of provisions of this Ordinance and state statute or regulation governing riparian buffers, including reservoir and wetland buffers. The provisions of those sections, where applicable, shall supersede conflicting provisions of this Article.

15.1.2 Violation

- A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.
- B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.
- C. Each day of a violation may be considered a separate and distinct violation.

15.1.3 Violator

A. General

Violators may include any person who owns, leases, occupies, manages, or builds any structure or engages in any land development activity in violation of this Ordinance and any person who owns, leases, or occupies a use in violation of this Ordinance. A violation may be charged against more than one violator.

Commentary: The definition of violator and the ability to charge more than one violator means that both tenant and landlord, where applicable, may be in violation and subject to penalties.

B. Sedimentation and Erosion Control (Sec. 3.8, Sec. 12.10, Sec. 15.5)

The person responsible for violations of Sec. 3.8, Sedimentation and Erosion Control or Sec. 12.10, Sedimentation and Erosion Control, or Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, consistent with the provisions of NCGS § 113A-64 shall mean:

1. The developer or other person who has, or holds himself out as having, financial or operation control over the land-disturbing activity; or

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2. The landowner or person in possession or control of the land when he or she has directly or indirectly allowed the land-disturbing activity, has benefited from it, or has failed to comply with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act), Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan.

15.1.4 Responsibility

The Planning and/or Inspections Director, and/or County Engineer, or appropriate designees, shall enforce this Ordinance and the remedies authorized under this section. The responsible individual shall have the authority to settle any violations that involve the payment of money to the governing entity in exchange for a written release from actual or potential claims.

Sec. 15.2 Determination of Violation

15.2.1 Notice of Violation

- A.** When a violation is discovered, and is not remedied through informal means, written notice of the violation shall be given. This notice shall be delivered by:
 - 1.** Hand delivery or certified mail to the violator's last known address; or
 - 2.** Certified mail or hand delivery to the property in violation; or
 - 3.** Posting the notice at the property in violation.
- B.** When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after mailing.
- C.** The notice shall include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action, and notice of the right to appeal. The notice shall also state the time period allowed, if any, to correct the violation, which time period may vary depending on the nature of the violation and knowledge of the violator.
- D.** This notice shall be an administrative determination subject to appeal as provided below.
- E.** A notice of violation shall not be required where a notice of the same violation has been issued to the same violator at the same property within the previous two years. In such cases, the violator may be charged with a continuing violation without further notice. A notice shall also not be required where action is taken under paragraph 15.3.5, Judicial Action to Collect Civil Penalty, or paragraph 15.3.6, Permit Denial or Conditions.

15.2.2 Appeal to Board of Adjustment

- A.** A violator who has received a notice of violation may appeal the Director's determination that a violation has occurred to the Board of Adjustment by making a written request and paying the appropriate fee within 30 days of receipt of the notice of violation.
- B.** Citations that follow the original notice of violation may not be appealed to the Board.
- C.** The Board shall hear the appeal and may affirm, modify, or revoke the determination of a violation. If there is no appeal, the Director's determination of the nature and degree of violation are final.

15.2.3 Failure to Comply with Notice or Board of Adjustment Decision

If the violator does not comply with a notice of violation which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed in State law or by this Ordinance.

Sec. 15.3 Remedies; Enforcement Action

15.3.1 General

Enforcement may be by any one, all, or a combination of the remedies described below or in other sections of this Ordinance or otherwise authorized by common law or statute. Such statutes include but are not limited to NCGS § 153A, Sections 123, 324, 334, and 361 et. seq. and § 160A Sections 175, 365, 375, 389, and 421 et. seq.

15.3.2 Options for Remedying a Violation

A violator shall have several options available to come into compliance with this Ordinance, as listed below. During the efforts to correct the violation, enforcement actions may be stayed.

- A.** Meet the Ordinance requirements cited in the Notice of Violation or citation.
- B.** Where appropriate, obtain a zoning map change for the property to a district in which the activity would be permitted, in accordance with Sec. 3.5, Zoning Map Change. Failure to obtain the zoning map change shall mean that the violation has not been corrected.
- C.** Where appropriate, request a variance to the provisions of this Ordinance, in accordance with Sec. 3.14, Variance. Failure to obtain the variance shall mean that the violation has not been corrected.
- D.** Amend the text of this Ordinance to eliminate the violation, in accordance with Sec. 3.19, Text Amendment. Failure to obtain the approval of the text change shall mean that the violation has not been corrected.

15.3.3 Injunctive Relief in Superior Court

A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NCGS § 160A-175 and NCGS § 153A-123. The governing entity shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of execution shall be a lien on the property in the nature of a mechanic's or materialman's lien.

15.3.4 Criminal Penalties

A violation shall constitute a misdemeanor or infraction, as provided by NCGS § 14-4, subject to a maximum fine of \$500 and imprisonment of up to 30 days for each violation.

15.3.5 Judicial Action to Collect Civil Penalty

A civil action in the nature of debt may be filed in any court of competent jurisdiction to collect an unpaid civil penalty imposed under Sec. 15.4, Penalties Other than Sedimentation and Erosion Control Penalties.

15.3.6 Permit Denial or Conditions

Any permit, certificate, or other authorization that has been issued for property on which there is an uncorrected violation may be withheld, or may be conditioned on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security.

15.3.7 Permit Revocation or Voiding

- A. Any permit, certificate or other authorization may be revoked or voided upon a written determination by the Planning Director, the Inspections Director, or the County Engineer, or designees, that the violation is substantial. The determination of such substantial violation shall be subject to appeal as provided in paragraph 15.2.2, Appeal to Board of Adjustment.
- B. Any permit or certificate mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked or voided without such written determination as required above.

15.3.8 Stop Work Order

- A. When the violation pertains to construction or alteration of a structure, a stop work order may be issued in accordance with NCGS § 160A-421 and NCGS § 153A-361 or the NC Building Code. All zoning requirements pertaining to the location and siting of structures are considered local building laws for application of NCGS § 160A-421 and NCGS § 153A-361.
- B. Appeal of an order relating to a local building law shall initially be to the Inspections Director or designee who shall conduct a hearing within 10 working days of the issuance of the order. Further appeal may be made to the Board of Adjustment.

15.3.9 Additional Remedies for Sign Violations

In addition to the other remedies provided in this Section, violations of Article 11, Sign Standards may be remedied through the following:

- A. The Inspections Director, or designee, may revoke the sign permit for a sign or sign structure in violation, including violations of restrictions on sign copy or the content of a sign face, and may require that the sign copy or sign face be removed, or that the structure on which such copy or face appears be removed. Removal of a sign structure shall not be required where the sign structure could legally be constructed in accordance with the provisions of Article 11, Sign Standards, in effect at the time the violation occurs and where the owner or operator of such sign structure can demonstrate to the Inspections Director's, or designee, satisfaction that he or she had no knowledge concerning the requirements of Article 11, Sign Standards.
- B. The Planning Director, or designee, may remove unpermitted signs, faces, and structures that are located in the public right of way, or on utility poles or structures within the public right of way, or signs, faces, and structures for which no owner can be located, or which present a danger to the public health or safety, or signs in violation of this Ordinance.
- C. Any repeated violation of the same provision of Article 11, Sign Standards, by the same individual or corporation at an identical or different location may result in immediate action against the individual or corporation, and may be considered a subsequent violation for the same offense, and each day a separate violation.

Sec. 15.4 Penalties

15.4.1 General

The Planning Director, or designee, may issue one or more citations and impose one or more civil penalties for a violation, as provided below. If the violator does not pay the civil penalty, the governing entity may collect it in court through a civil action in the nature of debt.

15.4.2 Citation

The Planning Director, or designee, may issue a citation and civil penalty for a violation.

15.4.3 Notice

Notice of the citation and civil penalty shall be given in the same manner as provided in paragraph 15.2.1, Notice of Violation, above. The notice shall include a copy of the notice of violation, the amount of the civil penalty, information about where to pay the civil penalty, the deadline for payment (which shall be 15 days from the date of receipt of the notice), and the possibility of civil and/or criminal enforcement.

15.4.4 Amount

- A.** The Planning Director, or designee, may impose a civil penalty of up to \$500 per violation.
- B.** The Planning Director, or designee, shall formulate written guidelines for zoning enforcement officers to use in assessing civil penalties. Criteria for assessing civil penalties shall include, but not be limited to:
 - 1.** The violator's knowledge of legal requirements;
 - 2.** Whether the violator has been guilty of past violations;
 - 3.** The possible profit to the violator in continuing the violation;
 - 4.** The impact of the violation on the community;
 - 5.** The degree of noncompliance; and
 - 6.** The cost and time required to remedy the violation.

15.4.5 Settlement of Penalties

- A.** The Planning Director or designee shall be authorized to determine the amount of payment of penalties that shall be accepted in full and final settlement of some or all of the claims the City or County may have in connection with the violation. The Planning Director or designee shall indicate in writing the claims from which the violator is released.
- B.** If the violation has not been remedied, payment of penalties shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

15.4.6 Continuing Violations

- A.** The Planning Director, or designee, may issue a citation for a violation that continues without being corrected.
- B.** The violator in such cases may be assessed a civil penalty for each day of the continuing violation.

- C. An initial citation for a single violation shall be issued before a citation for a continuing violation may be issued. If the violator has failed to pay the civil penalty and correct the violation after the initial citation, the violator shall be subject to a citation for a continuing violation with a daily civil penalty.
- D. An initial citation shall not be required if the Planning Director, or designee, has previously issued a notice of violation to the violator for the same violation within the previous two years, or if the violator has been specifically warned concerning the violation.

Commentary: “Specifically warned concerning the violation” includes any previous violator who has received a notice of violation or citation for the same violation – whether or not at the current location.

- E. The Planning Director, or designee, may give a single citation for a continuing violation. The citation shall contain a copy of the notice of violation and shall state the violation is continuing, that a daily civil penalty of a specified amount is being imposed, and that the penalty shall be cumulative.

15.4.7 Special Penalties for Destruction of Existing Vegetation

A. General

- 1. Any trees preserved on a development tract in order to meet Ordinance requirements or otherwise indicated to be preserved shall meet the standards of paragraph 8.3.2, Protection of Existing Vegetation.
- 2. Damaging or destroying any tree preservation area that is indicated on any site plan, development plan, preliminary plat, or final plat shall constitute a violation of this Ordinance.

- B. Any new trees planted as part of required landscaping under Article 9, Landscaping and Buffering, shall be maintained and, if necessary, replaced with vegetation. Failure to maintain and/or replace said vegetation shall be subject to the provisions of this section.

- C. Damage or destruction of preserved trees by an act of God shall not be subject to the provisions of this section.

D. Applicability and Penalties

- 1. Where any tree with a diameter of eight inches dbh or greater in an area indicated on approved plans to be preserved is damaged, destroyed or removed, such violation shall be penalized as follows:
 - a. A fine in an amount equal to one and one-half times the monetary value of the trees damaged, destroyed or removed. For purposes of such determination the Planning Director, or designee, shall apply the most current standards of the Council of Tree and Landscape Appraisers or a similar method in common use; and
 - b. Trees shall be replaced by new trees of a similar species with at least a two and one-half inch caliper and a cumulative total caliper greater than the original tree.
- 2. Where tree preservation areas are damaged, destroyed or removed and no documentation exists about previous tree cover, such violation shall be penalized as follows:

- a.** A fine of up to \$2.00 per square foot of disturbed area, not to exceed \$40,000 per violation; and
- b.** Replacement vegetation shall be provided in accordance with the buffer landscaping standards of Article 9, Landscaping and Buffering.

E. Certificate of Compliance

Any fine shall be paid and required replacement trees planted before a Certificate of Compliance is issued. Enumeration of these civil penalties shall not be construed to prohibit the use of any other remedy authorized by ordinance or state law.

Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties

- 15.5.1** Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee may periodically inspect land-disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or (the Act,) or an approved sedimentation and erosion control plan and to determine whether the measures utilized or required in the plan are effective in restraining erosion and retaining sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each sedimentation and erosion control plan.
- 15.5.2** No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.
- 15.5.3** If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.
- 15.5.4** The Sedimentation and Erosion Control Officer, or designee shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out their duties as prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- 15.5.5** The Sedimentation and Erosion Control Officer, or designee shall also have the power to require written statements, or the filing of reports under oath, with respect to land-disturbing activity.
- 15.5.6 Revocation of Permits**
- A.** The County Engineer shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer that a land-disturbing permit be revoked, the Officer or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

- B. Should the County Engineer determine that the land disturbing permit should be revoked, he/she shall serve the permittee or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.
- C. The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.
- D. No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer or designee has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

15.5.7 Civil Penalties

- A. Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who initiates or continues a land-disturbing activity for which sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be subject to civil penalties. The maximum civil penalty for a violation shall be \$5,000.00, or \$5,000.00 per day for a continuing violation. Civil penalties may be imposed from the date a violation was commenced. Each day of continuing violation shall constitute a separate violation.
- B. The Sedimentation and Erosion Control Officer or designee shall impose the civil penalties authorized by this section. The Sedimentation and Erosion Control Officer or designee shall notify the person upon whom the civil penalties are imposed of the amount and the reason for the penalties. In determining the amount of the penalties the Sedimentation and Erosion Control Officer or designee shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan. The notice of civil penalties shall be served by any means authorized under NCGS § 1A-1, rule 4, and shall direct the violator to either pay or contest the civil penalties, within 30 days after receipt of the notice, by filing a petition for a contested case under NCGS § 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the

recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.

- C. If payment is not received within 30 days after demand for payment is made the matter will be referred to the County Attorney's Office for initiation of a civil action to recover the amount of the civil penalties. Civil penalties that are not contested are due when the violator is served with a notice of civil penalties. Civil penalties that are contested are due at the conclusion of administrative and judicial review.
- D. The clear proceeds of civil penalties collected pursuant to this section shall be credited to the Durham Public Schools in accordance with the provisions of NCGS § 115C-437.

15.5.8 Criminal Penalties

Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS § 113A-64.

15.5.9 Enforcement Alternatives

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under paragraph 3.8.3.

- A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.
- B. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalties assessed under this section.
- C. Land-disturbing activities undertaken without first obtaining a land-disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph 15.5.7, Civil Penalties.

- D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.

15.5.10 Restoration of Areas Affected by Failure to Comply

The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § 113A-57(3) and Sec. 12.10, Sedimentation and Erosion Control, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section or the Act.

Sec. 15.6 Floodplain and Flood Damage Protection Enforcements and Penalties

15.6.1 Corrective Procedure

A. Violations to be Corrected

When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.

B. Actions in Event of Failure to Take Corrective Action

If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

1. that the building or property is in violation of the requirements of Sec. 8.4, Floodplain and Flood Damage Protection Standards;
2. that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
3. that following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

C. Order to Take Corrective Action

If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of Sec. 8.4, Floodplain and Flood Damage Protection Standards, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

D. Appeal

Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

E. Failure to Comply with Order

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

15.6.2 Penalties for Violations

In addition to the penalties specified on paragraph 15.3.4, Criminal Penalties, the following penalties may also be imposed:

A. Stop Work Order

The Inspections Director, or designee, (acting as the Floodplain Administrator) may order work on any site within a Special Flood Hazard Area to be immediately stopped whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance. The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop work order shall constitute a misdemeanor.

B. Revocation of Permits

The Inspections Director, or designee (acting as the Floodplain Administrator), may revoke and require the return of a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.

C. Correction of Violations

The owner or occupant of any building or property notified of a violation by the Inspections Director, or designee, shall immediately remedy each of the violations.

D. Actions in the Event of Failure to Take Corrective Action

1. If the owner or occupant of any building or property notified of a violation fails to take corrective action, the Inspections Director, or designee, (acting as the Floodplain Administrator) shall provide written notice consistent with the requirements of paragraph 15.2.1, Notice of Violation, that the building or property is in violation of the provisions of Sec. 8.4, Floodplain and Flood Damage Protection Standards.
2. The Inspections Director (acting as the Floodplain Administrator) shall schedule a hearing at a designated place and time, not later than ten days after the date of notice, at which time the owner or occupant of the building or property shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the violation.
3. If, following the hearing, the Inspections Director finds that the building or property is in violation of the provisions of Sec. 8.4, Floodplain and Flood Damage Protection Standards, he/she shall issue an order in writing to the owner or occupant of the building or property to correct the violation by altering, vacating, or demolishing the building or removing any fill, whichever is appropriate, within a period deemed reasonable by the Inspections Director. Such period shall not be less than 60 days unless the Inspections Director finds that the violation results in imminent danger to life or other property, in which case a shorter period to correct the violation may be imposed.

Sec. 15.7 Inspections and Investigations

15.7.1 Authorization of Inspection Program

A program of inspection and investigations to determine compliance with this Ordinance and orders, plans, permits, and authorizations issued under this Ordinance is hereby authorized. This program shall be conducted under the general authority of the Planning Director, or designee, and shall be carried out by zoning enforcement officers designated by the Planning Director, or designee.

15.7.2 Inspections of Private Property

- A.** Inspections on private property to determine compliance may be made at any reasonable time with the consent of the occupant of the property, except that, on projects being developed within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, the Inspections Director, or designee (acting as the Floodplain Administrator) shall have authority to make as many inspections of the work as may be necessary to ensure that it is being done according to the requirements of this ordinance and the terms of the permit. In exercising this authority within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, the Inspections Director, or designee, shall have a right, upon presentation of credentials, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection and/or enforcement.
- B.** Inspections may also be made when an administrative search and inspection warrant has been issued pursuant to NCGS § 15-27.2 by a proper judicial official. To obtain a warrant, the enforcement officer shall show through facts supplied in a sworn affidavit that either:
 - 1.** The inspection is being conducted as part of an administrative plan to inspect all properties of a certain type, and the determination of the properties to inspect was made in accordance with neutral criteria; or
 - 2.** That there is probable cause for believing that a violation may exist.

Sec. 15.8 Riparian Buffer Protection Enforcement

15.8.1 Applicability

The City or County as appropriate shall conduct enforcement pursuant to this section, except where enforcement of an ordinance violation is reserved to the State under this Ordinance and/or State law.

15.8.2 Violation

In accordance with paragraph 15.1.2, Violation, a violation under this section occurs where a person fails to comply with any riparian buffer requirement of this Ordinance, which are contained in Sec. 8.5, Riparian Buffer Protection Standards, Sec. 8.6, Water Supply Reservoir Buffer, Sec. 8.7, Watershed Protection Overlay Standards, Sec. 8.9, Wetlands Protection Standards, Sec. 15.8, Riparian Buffer Protection Enforcement, and any rule, authorization, approval, or order adopted or issued pursuant to those sections.

15.8.3 Inspections

- A.** Agents or employees authorized by the City or County as appropriate may inspect riparian buffers, including reservoir and wetland buffers, to ensure compliance with this Ordinance. Such authorized agents or employees shall have the power to conduct such investigations as they may reasonably deem necessary to carry out their duties, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of inspecting any riparian buffer or conducting a related investigation.
- B.** No person shall willfully resist, delay, or obstruct an authorized agent or employee while that person is lawfully inspecting or attempting to inspect a riparian buffer under this section, nor shall any person interfere with an authorized agent or employee while he or she is in the process of carrying out other official duties.
- C.** Notice of the right to inspect shall be included in any riparian buffer approval.

15.8.4 Power to Require Statements

The City or County as appropriate shall have the power to require written statements, or the filing of reports under oath, with respect to riparian buffers.

15.8.5 Notice of Violation

If it is determined that a person has violated any riparian buffer requirement of this Ordinance, a notice of violation shall be issued and served upon that person pursuant to paragraph 15.2.1, Notice of Violation. As stated therein, the notice shall include remedial measures, which may include revegetation, to be performed, and a deadline for compliance if immediate compliance is not required. The notice shall be an administrative determination subject to appeal under paragraph 15.8.7, Appeal.

15.8.6 Civil Penalties

A. Penalties

Any person who violates any riparian buffer requirement of this Ordinance shall be subject to a civil penalty. The civil penalty for a violation may be a maximum of ten thousand dollars (\$10,000) per day. For a continuing violation, the civil penalty may be a maximum of twenty-

five thousand dollars (\$25,000) per day. Each day of a continuing violation shall constitute a separate violation.

B. Notice

The City or County as appropriate shall issue and serve notice of the civil penalty pursuant to paragraph 15.4.3, Notice, and shall also provide information on the basis for the penalty. The notice shall be an administrative determination subject to appeal under paragraph 15.8.7, Appeal.

C. Payment

A civil penalty is due when the violator is served with notice of the civil penalty. If the penalty is not paid within 30 days of service, or, if appealed, within 30 days of the conclusion of any appeals, the City or County as appropriate may institute a civil action to recover the penalty amount.

D. Use

Civil penalties collected pursuant to this section and used to defray the cost of enforcement or conduct any remediation related to the violation(s) shall be credited to the general fund of the City or County as appropriate as nontax revenue.

15.8.7 Appeal

Appeal from a notice of violation issued under paragraph 15.8.5, Notice of Violation, or a notice of civil penalty issued under paragraph 15.8.6, Civil Penalties, shall be to the Durham Board of Adjustment, which shall conduct a hearing and affirm, modify, or revoke the administrative determination. Notice of appeal must be submitted, and the appropriate fee paid, within 30 days of receipt of the notice of violation or notice of civil penalty as appropriate. If notice of appeal is not submitted in a timely manner, the administrative determination shall be final. Appeal from the Board of Adjustment decision shall be to Superior Court.

15.8.8 Injunctive Relief

Whenever there is reasonable cause to believe that any person is violating or may violate the riparian buffer requirements of this Ordinance, the City or County as appropriate may, either before or after the institution of any other action or proceeding authorized by this section, institute an action for injunctive relief pursuant to paragraph 15.3.3, Injunctive Relief in Superior Court. The institution of such action shall not relieve any party to such proceedings from any penalties assessed or obligations otherwise imposed under this section.

15.8.9 Criminal Penalties

Pursuant to NCGS 143-215.6B, any person who violates any riparian buffer requirement of this Ordinance shall be guilty of a crime as follows:

- A.** Negligent violation: Class 2 misdemeanor with a maximum fine of fifteen thousand dollars (\$15,000) per day of violation, and a maximum cumulative total of two hundred thousand dollars (\$200,000) for each 30-day period of a continuing violation;
- B.** Knowing or willful violation: Class I felony with a maximum fine of one hundred thousand dollars (\$100,000) per day of violation, and a maximum cumulative total of five hundred thousand dollars (\$500,000) for each 30-day period of a continuing violation; or

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- C. Knowing violation: Class C felony with a maximum fine of two hundred fifty thousand dollars (\$250,000) per day of violation, and a maximum cumulative total of one million dollars (\$1,000,000) for each 30-day period of a continuing violation.

Commentary: The terms “knowing or willful” as in paragraph B and “knowing” as in paragraph C are explained in NCGS 143-215.6B.